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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENO JEOVANI MACIEL,

Defendant.

CASE NO. 1:21-MJ-00111 SAB

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: May 6, 2022
TIME: 2:00 p.m.
COURT: Hon. Sheila K. Oberto

This case is set for a preliminary hearing on May 6, 2022. The parties agree and stipulate to continue the preliminary hearing until July 8, 2022. Defense counsel has continued to be engaged in discussions and further investigation and needs additional time to conclude that process. Since the last continuance, there have been issues with visitation with defendant due to moving and other COVID-related isolation issues.

On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020 and allows district judges to continue all criminal matters to a date after June 1. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California until further notice and allows district judges to continue all criminal matters. This and previous General Orders were entered to address public health concerns related to COVID-19.

Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later than 14 days

1 after initial appearance if the defendant is in custody,” unless the defendant consents and there is a
 2 “showing of good cause”, or if the defendant does not consent and there is a “showing that extraordinary
 3 circumstances exist and justice requires the delay.” Here, the defendant consents and there is good
 4 cause.

5 Although the General Orders address the district-wide health concern, the Supreme Court has
 6 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 7 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 8 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 9 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 10 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 11 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 12 or in writing”).

13 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 14 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 15 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 16 the ends of justice served by taking such action outweigh the best interest of the public and the
 17 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 18 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 19 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 20 the defendant in a speedy trial.” *Id.*

21 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 22 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 23 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 24 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 25 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 26 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 27 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 28 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a

1 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

2 In light of the societal context created by the foregoing, this Court should consider the following
3 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
4 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
5 for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
6 pretrial continuance must be “specifically limited in time”).

7 **STIPULATION**

8 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
9 through defendant’s counsel of record, hereby stipulate as follows:

- 10 1. By previous order, this matter was set for preliminary hearing on May 6, 2022.
- 11 2. By this stipulation, defendant now moves to continue the preliminary hearing until **July**
12 **8, 2022, at 2:00 p.m.** and to exclude time between May 6, 2022, and July 8, 2022, under Local Code T4.
- 13 3. The parties agree and stipulate, and request that the Court find the following:
 - 14 a) The parties are discussing and conducting further investigation into pre-
15 indictment matters, and need additional time to conclude.
 - 16 b) Counsel for defendant desires additional time to consult with his client, conduct
17 further investigation, and discuss charges with the government. This has been delayed by the
18 defendant moving to a different jail and other COVID-related isolation issues.
 - 19 c) Counsel for defendant believes that failure to grant the above-requested
20 continuance would deny him the reasonable time necessary for effective preparation, taking into
21 account the exercise of due diligence.
 - 22 d) The government does not object to the continuance.
 - 23 e) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later
24 than 14 days after initial appearance if the defendant is in custody,” unless the defendant
25 consents and there is a “showing of good cause”. Here, the defendant consents and there is good
26 cause as set forth herein.
 - 27 f) Based on the above-stated findings, the ends of justice served by continuing the
28 case as requested outweigh the interest of the public and the defendant in an indictment or trial

1 within the original dates prescribed by the Speedy Trial Act.

2 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
3 et seq., within which an indictment must be filed and within which a trial must commence, the
4 time period of May 6, 2022 to July 8, 2022, inclusive, is deemed excludable pursuant to 18
5 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by
6 the Court at defendant's request on the basis of the Court's finding that the ends of justice served
7 by taking such action outweigh the best interest of the public and the defendant in a speedy
8 indictment/trial.

9 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
10 Speedy Trial Act dictate that additional time periods are excludable from the period within which an
11 indictment must be filed and a trial must commence.

12 IT IS SO STIPULATED.

13
14 Dated: May 3, 2022

PHILLIP A. TALBERT
United States Attorney

16
17 /s/ KIMBERLY A. SANCHEZ
KIMBERLY A. SANCHEZ
Assistant United States Attorney

18
19 Dated: May 3, 2022

/s/ PETER JONES
PETER JONES
Counsel for Defendant
GENO JEOVANI MACIEL

22 **ORDER**

23 IT IS SO ORDERED.

24
25 DATED: 5/4/2022

Sheila K. Oberto
THE HONORABLE SHEILA K. OBERTO
UNITED STATES MAGISTRATE JUDGE